In the

Supreme Court of the United States

OCTOBER TERM, 1961

No. 852

B. T. WOODARD AND B. J. WOODARD
d/b/a WOODARD MOTOR COMPANY,
Petitioners,

v.

GENERAL MOTORS CORPORATION,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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B. T. Woodard and B. J. Woodard, hereinafter called petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on January 11, 1962.

OPINION BELOW

The opinion of the Court of Appeals (infra, Appendix pp. 1a-19a) is reported at *298 F. 2d 121*.

JURISDICTION

The judgment of the Court of Appeals was dated and entered on January 11, 1962 (R. p. 457, Appendix p. 20a).

The jurisdiction of this Court is invoked under the provisions of 28 U. S. C. Section 1254(1).

QUESTIONS PRESENTED

In an action for damages under Public Law 1026—84th Congress—by a Chevrolet dealer against manufacturer for wrongful termination of an automobile franchise agreement on the assigned ground that dealer had failed to maintain a satisfactory and adequate place of business when dealer did not respond to demands of manufacturer to move or begin construction of a new building on threat of termination, the Court granted summary judgment for manufacturer. The Court of Appeals affirmed the judgment on the grounds that the satisfaction and adequacy prescribed by the franchise were those in the sole judgment of manufacturer unquestionable except for fraud and a reasonable time to move or to begin new construction had expired without reasonable efforts on the part of dealer to do either. The dealership was, as manufacturer knew, located in the premises when the franchise was signed and delivered by manufacturer. The franchise provided that dealer should maintain a place of business "satisfactory as to appearance and location and adequate in size and layout" for which objective standards are available. It did not specify satisfaction or adequacy in the sole judgment of manufacturer. The franchise contained no understanding that the premises were inadequate or unsatisfactory or that the dealership would be moved, and provided that there were no other understandings, oral or in writing, concerning the dealership. It provided that the law of Michigan should govern the contract. Manufacturer had

approved the premises for the operation of a Buick dealership. No change occurred to make the premises less satisfactory or adequate from the date the franchise was signed to the date of termination. Dealer continuously made efforts to acquire other facilities or other sites on which to begin construction of facilities for the dealership from the date the franchise was signed to the deadline set by manufacturer, and five days before the deadline offered to acquire a building which manufacturer had indicated to be acceptable with renovation. There was no evidence that manufacturer was in good faith dissatisfied or that the premises were in fact inadequate in size and layout or unsatisfactory as to appearance and location. There was evidence from which reasonable inferences could be drawn that the manufacturer's dissatisfaction was in bad faith; that the premises were satisfactory and adequate; that a reasonable time to move or to begin construction had not expired and that reasonable efforts to acquire other facilities or begin construction had been made. The questions presented are as follows:

1. Whether in nullification of a purpose of Public Law 1026—84th Congress a court may hold that a provision in an automobile franchise agreement that the dealer maintain a place of business satisfactory as to appearance and location and adequate in size and layout prescribes satisfaction and adequacy in the sole judgment of the manufacturer, unquestionable except for fraud, when the agreement does not specify satisfaction and adequacy in the sole judgment of the manufacturer, prescribes conditions of operative fitness for which objective standards are available and the law governing the contracts as well as general law, holds that where

operative fitness is involved satisfaction is not for the personal judgment of the manufacturer alone.

2. Whether a court may deny the dealer right of trial by jury and render summary judgment for manufacturer on the grounds that manufacturer's judgment that the premises were unsatisfactory and inadequate was not fraudulent and that reasonable time to move or to begin new construction had expired without reasonable efforts of dealer to do either when there was no evidence that manufacturer was in good faith dissatisfied, or that the premises were in fact unsatisfactory or inadequate and there was evidence from which reasonable inferences could be drawn that the manufacturer's dissatisfaction was in bad faith; that the premises were in fact satisfactory and adequate; that the time to move or to begin new construction had not expired and that dealer had made reasonable efforts to do each.

STATUTE INVOLVED

The statute involved, Public Law 1026—84th Congress, Act of August 8, 1956, Chap. 1038, Secs. 1-5, 70 Stat. 1125; 15 U. S. Code, Secs. 1221-1225, is set out in Appendix, infra, pages 21a-23a.

STATEMENT OF THE CASE

Petitioners, father and son, partners doing business as Woodard Motor Company, at Greenville, Texas (R. pp. 35, 93), under franchise agreements with respondent, had for many years prior to November, 1955, engaged as automobile dealer operating the dual Buick and Chevrolet dealership in that city (R. pp. 41, 101). In 1955, respondent determined that it would not continue the sale of its Buick prod-

ucts in the same dealership with its Chevrolet products in Greenville, Texas (R. pp. 41, 101). Thereafter, respondent entered into a franchise agreement with the petitioners' partnership as the Chevrolet dealership in Greenville, Texas, at 3702 Lee Street (R. pp. 31, 101, 427) and simultaneously entered into a franchise agreement with the petitioner B. J. Woodard, individually, to operate the Buick dealership in Greenville, Texas, at 1403 Stonewall Street (R. pp. 41, 101). Respondent approved the premises at 1403 Stonewall Street as satisfactory as to appearance and location and adequate in size and layout for the operation of the Buick dealership (R. pp. 41, 103). Thereafter, petitioners' lease on the premises at 3207 Lee Street, in which the Chevrolet dealership was located and being conducted, was about to expire. Petitioners, unable to effect continued occupancy of the premises on satisfactory terms, determined to move the dealership from those premises (R. pp. 164, 176, 179, 180, 275-282), into 1403 Stonewall Street, where the Buick dealership was located (R. pp. 42, 165, 280). Petitioners planned to move the Buick dealership out of 1403 Stonewall Street (R. p. 28) and, before moving the Chevrolet dealership into those premises, obtained permission from respondent to move Buick out (R. pp. 282-285). Petitioners moved the Chevrolet dealership into the premises at 1403 Stonewall Street at the end of March, 1956 (R. pp. 179, 180). Petitioners had sought but not yet obtained written permission of respondent to move the Chevrolet dealership (R. p. 104). Petitioners could not move Buick out of the premises before moving Chevrolet therein for the reason that occupancy of the building to which Buick was to be moved could not be obtained for a period of several

days (R. pp. 285, 287, 288). When it learned that the Chevrolet dealership had been moved into the building occupied by the Buick dealership, respondent withdrew the permission it had previously given to petitioners to move Buick out (R. pp. 285-286).

After petitioners had moved the Chevrolet dealership into 1403 Stonewall Street, and while the Chevrolet and Buick dealership were both being operated in those premises, all of which respondent knew, the respondent, on May 29, 1956, executed and delivered to petitioners the printed Chevrolet franchise agreement, prepared by respondent, recited to be effective March 1, 1956, and to run to October 31, 1960 (R. pp. 42, 46, 49, 46-92, 94, 95, 105). The agreement provided that petitioners should "maintain a place of business satisfactory as to appearance and location and adequate in size and layout" for the operation of the Chevrolet dealership (R. pp. 61-62). The agreement provided that there were "no other agreements or understandings, either oral or in writing, between the parties affecting this agreement or relating to the sale or securing of Chevrolet motor vehicles, chassis, parts and accessories" and that "This agreement cancels and supersedes all previous agreements between the parties" (R. p. 91). The franchise agreement further provided that, if petitioners failed to maintain a place of business satisfactory as to appearance and location and adequate in size and layout, respondent had a right to terminate the franchise agreement on three months' notice in writing (R. p. 72). The franchise agreement contained no understanding that the premises at 1403 Stonewall Street, in which, as the respondent knew, the Chevrolet dealership was located, along

with the Buick dealership, at the time the agreement was executed and delivered, were unsatisfactory or inadequate, and contained no agreement or provision that the dealership would be moved to other premises (R. pp. 46-92).

At the time of signing the franchise agreement, respondent requested to be informed as to the petitioners' plans with reference to 1403 Stonewall Street, in which the dealership was then located (R. pp. 43, 105). Petitioners advised respondent that it was their plan eventually to build a new building on the new highway at Greenville as soon as the right-of-way was determined, or to move the Chevrolet dealership into another building if a building which suited petitioners could be found (R. pp. 186-188, Defendant's Exhibit 21, R. p. 399). Respondent inquired if petitioner B. T. Woodard would be willing to sign a letter to that effect and, upon being told that he would, respondent advised petitioner that his word was good enough, and signed and delivered the franchise agreement (R. p. 188).

In line with their plans and intentions, petitioners sought to obtain property adjacent to the new highway at Greenville, Texas, on which to construct a building for the housing of the Chevrolet dealership, but were advised as late as April, 1957, by the Texas Highway Department not to acquire land for any business depending upon the highway for a few months more because of the possibility that plans could be changed and access to the highway be cut off by fences built to keep traffic from crossing the highway (R. pp. 150, 327).

On October 9, 1956, on the ground that the move of the Chevrolet dealership from 3207 Lee Street into 1403 Stone-

wall Street, in which the Buick dealership was also located, violated the agreement between the parties, respondent demanded that, within a reasonable time, petitioners provide separate exclusive facilities, adequate and satisfactory to house the Chevrolet dealership (R. pp. 400-402, Defendant's Exhibit 22). On October 23, 1961, respondent advised petitioners that its assistant zone manager would visit Greenville and inspect the premises at 1403 Stonewall Street and advise whether those premises would be satisfactory and adequate if the Buick operation were moved to another location (Defendant's Exhibit 24, R. pp. 404-5). On January 18, 1957 respondent, still complaining that it had never approved the move of the Chevrolet dealership to 1403 Stonewall Street and its operation there with the Buick dealership, wrote to petitioners stating that they had been advised that the premises at 1403 Stonewall Street were not adequate for a Chevrolet dealership and that the former premises at 3207 Lee Street were not adequate in their present condition, but could be made adequate if considerable renovating and remodeling were done, and advised petitioners that if the Chevrolet dealership was not in occupancy of adequate facilities on or before April 30, 1957, or if concrete evidence was not presented to respondent within that time that dealership construction was under way, respondent would terminate the franchise agreement (R. pp. 406-407, Defendant's Exhibit 25).

Petitioners planned to invest between $175,000.00 and $250,000.00 in the construction of a new building to house the Chevrolet dealership (R. p. 305). In the period from and

after May 29, 1956, petitioners made efforts to obtain a new location for the Chevrolet dealership or for the building of a building to house that dealership, as follows:

Examined and negotiated with real estate agent Roger Wise for three different pieces of property on the new highway (R. p. 193); checked into the possibility of acquiring the International Harvester Building (R. p. 197); negotiated with Dr. Young, the owner of the Chrysler-Plymouth Building, for that building (R. pp. 208-209); tried to buy two lots in town (R. p. 214); tried to buy a lot on North Stonewall Street adjoining the square, and could not get it (R. p. 214); negotiated with Roger Wise for 102 acres on the new highway, and Highway Department advised waiting because of uncertainty of accessibility to road from locations (R. pp. 301-303); negotiated for a piece of property at Highway 67-T (not new highway) and could not buy because cost too high (R. p. 302); negotiated for property between Stonewall and Wesley Streets, approximately one-fourth mile from courthouse, and owner wanted too much money (R. p. 302); negotiated with owner Curtis for old building at 3207 Lee Street, where dealership had been located (R. pp. 290-292, 324); negotiated for property located approximately one-half block from courthouse (R. p. 339); negotiated for piece of property owned by Kimbell Milling Company (R. p. 339); negotiated for property one block east of courthouse (R. p. 340); decided to purchase property on new highway and went over blueprints of property with real estate agent Roger Wise; called on highway Department and were advised by engineers there (in April, 1957, R. p. 150) not to purchase

for several months for any business depending somewhat on highway because of possibility of change of access points (R. pp. 326-329); negotiated with Dr. Young, owner, for purchase of Chrysler-Plymouth Building and obtained agreement of Dr. Young to sell at stated price, and checked on price of lots south of Dr. Young's building and lot in front (R. pp. 329-331); talked to real estate agent Roger Wise from one to three times every week (R. p. 339); and never stopped trying to secure a location for a new building (R. p. 339).

On April 20, 1957, respondent's assistant zone manager advised petitioners that it was too late to comply with the ultimatum contained in respondent's letter of January 8, 1957 by acquiring an existing building; that the zone manager had made up his mind, when petitioners had not moved by January 1, that petitioners were going to build a new building or be terminated (R. p. 333).

On April 25, 1957, petitioners advised respondent that they had been advised by the Texas Highway Department not to buy property on the new highway for building purposes until sometime later in the year; that it was possible at that time for them to purchase the Chrysler-Plymouth dealership building and lots on the south adjoining it, provided it would meet the respondent's approval; that this was the location they had all looked at and asked, in view of the time limit upon them, if it would be possible to secure an extension in order to wrok out this proposal (Defendant's Exhibit 26, R. pp. 408-409). Respondent had already indicated that the Chrysler-Plymouth Building would be ac-

ceptable, with extensive remodeling (R. pp. 209-210). Respondents did not reply to this letter (R. p. 412).

On July 23, 1957 respondent terminated the Chevrolet franchise agreement by written notice of that date, effective three months from receipt (R. p. 414, Defendant's Exhibit 30) on the ground that petitioners had failed to maintain a satisfactory and adequate place of business.

In the period from the signing of the franchise agreement, on May 29, 1956, to the effective date of respondent's termination of the franchise agreement, October 23, 1957, petitioners maintained the premises at 1403 Stonewall in a first-class condition and state of repair and no change occurred in the appearance and location or size and layout of those premises, or in the area of those premises, or in the business of Woodard Motor Company, affecting the satisfaction or adequacy of that location (R. p. 127).

Petitioners stipulated that the respondent was dissatisfied with the premises at 1403 Stonewall Street, but that such dissatisfaction was not in good faith (R. p. 148). There was evidence in the record that the respondent had stated to the petitioners on many occasions that it was dissatisfied with the premises at 1403 Stonewall Street for the operation of the Chevrolet dealership. There was no evidence in the record that the respondent was in good faith dissatisfied with the premises for that operation. There was evidence from which it could be inferred that respondent's dissatisfaction was not in good faith. There was no evidence in the record that the premises at 1403 Stonewall Street were not, in fact, satisfactory as to appearance and location and adequate in

size and layout for the operation of the Chevrolet dealership. There was evidence in the record that the premises were, in fact, satisfactory as to appearance and location and adequate in size and layout for the operation of the Chevrolet dealership. Respondent had approved the location for Buick and executed and delivered the Chevrolet franchise without providing a contractual obligation to move (R. pp. 41, 42, 46, 49, 94, 95, 103, 105).

On October 19, 1957, petitioners filed their suit. On January 24, 1958, respondent offered petitioners a franchise agreement identical in all respects with the franchise agreement terminated by respondent provided petitioners would obtain other, adequate facilities for the operation of the Chevrolet dealership, and stated that the facilities on Lee Street, from which the Chevrolet dealership had been moved in March of 1956, were satisfactory and acceptable to respondent (R. pp. 420-421). Petitioners, having filed suit, declined the offer (R. pp. 421-423).

In this suit petitioners sought damages on claims for compensatory damages for loss of anticipated profits for wrongful breach of the Chevrolet franchise agreement, for compensatory damages for loss of anticipated profits beyond the franchise term for termination of the franchise agreement in violation of Public Law 1026—84th Congress and, alternatively, for exemplary damages on account of that tort accompanying the wrongful breach of the franchise agreement (R. pp. 35-45, 129, 140).

The district court had jurisdiction on diversity of citizenship, in that plaintiffs were citizens of Texas and the

respondent a Delaware corporation, and the amount involved, exclusive of interest and costs, exceeded the sum of $10,000.00, and in that plaintiffs sued for recovery of damages under Public Law 1026—84th Congress.

Petitioners demanded a jury (R. p. 45).

Petitioners moved for summary judgment on the issues of liability on the ground that they were entitled to such judgment as a matter of law on the undisputed material facts (R. pp. 125-128). Petitioners contend the following undisputed facts authorized such judgment: respondent executed and delivered to petitioners the franchise agreement on May 29, 1956, when, as respondent knew, the Chevrolet dealership was located, along with the Buick dealership, in the premises at 1403 Stonewall Street; the agreement contained no understanding that the premises were not satisfactory or adequate and no provision that the dealership would be moved from such premises, and contained the provision that there were no other understandings, oral or in writing, between the parties affecting the agreement or the operation of the dealership; no change occurred in the premises thereafter making them less satisfactory or adequate; petitioners were under no contractual obligation to move the Chevrolet dealership; respondent's termination of the franchise agreement, for the reason that petitioners did not provide other facilities for the operation of the dealership, was wrongful and an unlawful breach of the agreement; respondent's demands that petitioners move the dealership or begin the construction of a new building, which petitioners were under no contractual obligation to do, on threat of termination of the franchise agreement, was coercion and intimidation, within the purview of Public Law

1026—84th Congress. Petitioners contend that the many disputed facts raised by respondent's pleading were immaterial, on authority of *Ohio and Mississippi Ry. Co. v. McCarthy, 96 U. S. 258, 267, 268, 24 L. Ed. 693*, followed in Michigan, the law of which was provided to govern the contract by its terms, in that respondent, having assigned failure of petitioners to maintain a satisfactory and adequate place of business for the dealership as the reason for its termination of the franchise agreement could not, after litigation followed, mend its hold and assign a different ground. Petitioners' Motion for Summary Judgment was denied (R. pp. 143, 144).

Respondent moved for a summary judgment on the ground that the pleadings and testimony of the petitioners on their oral depositions in this cause and the exhibits thereto showed that respondent was entitled to judgment as a matter of law (R. p. 124). The district court granted respondent's Motion for Summary Judgment and granted judgment for respondent (R. pp. 143-144). Petitioners appealed (R. pp. 151-152).

The Court of Appeals for the Fifth Circuit, apparently entertaining some doubt as to the constitutionality of Public law 1026—84th Congress (Appendix pp. 12a-14a), affirmed the judgment of the district court on the ground that the provision of the Chevrolet franchise agreement which provided that the dealer maintain a place of business satisfactory in appearance and location and adequate in size and layout, prescribed a satisfaction and adequacy in the sole personal judgment of the respondent unquestionable by

parties or court, except when fraudulently made, and that, since respondent had expressed dissatisfaction with the premises and there was no evidence of fraud therein, its termination on that ground was lawful (Appendix pp. 10a-12a). In support of this position, the Circuit Court cited a decision of an intermediate Texas appellate court, *Sanger v. Slayden, 7 Tex. Civ. App. 605, 26 S. W. 847*, involving satisfaction with title, and its own decision in *Ard Dr. Pepper Bottling Co. v. Dr. Pepper Company (from Mississippi), 202 F. 2d 372*, in which the contract involved specifically provided that the satisfaction prescribed was satisfaction in the sole personal judgment of the manufacturer (Appendix pp. 11a, 12a). The Court of Appeals erroneously stated in its opinion that "It is established by stipulation or by the appellants' admissions that * * * (the Stonewall Street location) was in fact inadequate for the Chevrolet dealership, * * *" (parenthetical words supplied) (Appendix p. 17a). The record is devoid of any such admission or stipulation.

REASONS FOR GRANTING THE WRIT

The court below, in affirming summary judgment for the respondent, nullified Public Law 1026—84th Congress, by adopting the type of interpretation of an automobile franchise agreement which had historically hamstrung the dealer, and which it was the very purpose of that statute to proscribe. In doing so, the court below erroneously decided an important question of Federal law which has not been, but should be, settled by this court, i.e., whether the concept of

good faith introduced into the automoble franchise relationship as a matter of public policy by Public Law 1026—84th Congress, proscribes an interpretation of a satisfaction clause as requiring satisfaction in the sole judgment of the manufacturer when the franchise does not so specify and the satisfaction prescribed is in respect of conditions of operating fitness for which objective standards are available.

The court below, in affirming summary judgment for respondent notwithstanding the existence of disputed issues of material fact effectively denied the dealer right of trial by jury in this action for damages under Public Law 1026—84th Congress, characterized as the "Day in Court" Bill. In so doing, that court, in a departure from generally accepted standards of Federal procedure which requires the examination of this court, acted in conflict with applicable decision of this court.

The court below held that the satisfaction and adequacy of the place of business prescribed by the franchise agreement was satisfaction and adequacy in the sole judgment of respondent, unquestionable by party or court except for fraud. This was precisely the type of court interpretation of automobile franchise agreements which Public Law 1026—84th Congress, sought to proscribe. House Report 2850, 84th Congress, Second Session, "*Automobile Dealer Franchises*", in respect to the Bill which became Public Law 1026—84th Congress, stated:

> "The purpose of the bill as amended by the committee is to supplement the anti-trust laws of the United States so as to permit a franchise automobile dealer to

> bring suit for damages without regard to the amount in controversy in United States district courts for the failure of the automobile manufacturer to act in good faith in conforming or complying with any of the terms or provisions of the franchise or in terminating, canceling or not renewing the dealer's franchise. The Bill creates a cause of action where none previously existed in that irrespective of contractual provisions it creates a right of review in the Federal courts of disputes between automobile manufacturers and their dealers involving good faith of the manufacturer in complying with or terminating or in not renewing the franchise." (Appendix p. 24a.)

Under "Reasons for Bill", the report takes note of the fact that in various suits in the past General Motors has characterized its dealer franchise as not constituting a legal contract, lacking mutuality, not contemplating loss of profits, unenforceable because of indefiniteness, uncertainty, and lack of consideration, terminable at will, and *as providing that the dealer shall perform to the satisfaction of the seller and that the question of satisfaction is for the seller alone to determine:* The report notes that, with few exceptions, the courts have sustained the manufacturer's interpretation of the agreement and have held that the dealers failed to state a cause of action when suit is brought on the agreement alone (Appendix p. 29a). The report, taking note of and quoting from such decisions, states:

> "This bill assures the dealer of an opportunity to secure a judicial determination irrespective of the contract terms as to whether the automobile manufacturer has failed to act in good faith in performing or complying with any of the provisions of his franchise or in terminating, canceling, or in not renewing a franchise." (Appendix p. 31a.)

The franchise agreement here did not provide that the dealer maintain a place of business satisfactory and adequate, ini the sole judgment of General Motors. It prescribed the maintenance of a place of business "satisfactory as to appearance and location and adequate in size and layout" for the operation of a Chevrolet dealership. That provision clearly prescribed conditions of operative fitness for which objective standards are available. Assuming arguendo that satisfaction as to appearance and location prescribed a satisfaction in the sole judgment of respondent it could not be heard to say the place of business was not satisfactory in that respect when it admitted it had approved the premises as satisfactory in appearance and location for the operation of its Buick dealership, selling cars no less fine in appearance or quality than its Chevrolet automobiles. "Adequate as to size and layout" clearly prescribes a condition of operative fitness. The franchise agreement nowhere specifies that the satisfaction and adequacy prescribed were in the sole judgment of respondent.

In holding that the satisfaction and adequacy of the place of business provided by the franchise agreement was satisfaction and adequacy in the sole judgment of respondent, unquestionable except for fraud, the court below relied upon an early decision of an intermediate Texas appellate court having to do with a contractual provision prescribing satisfactory title and, upon its own decision in *Ard Dr. Pepper Bottling Company v. Dr. Pepper Company*, 202 F. 2d 372 (from Mississippi), in which the contract specifically provided that "the judgment and determination of Dr. Pepper

Company, when made in good faith, as to the failure of the grantee to comply with any of the terms of this license shall be and is hereby made conclusive and final." Neither the law of Texas nor the law of Mississippi governed the franchise agreement here. This agreement specifically provided that it was to be governed by the law of Michigan (R. p. 91). The law of Michigan, on satisfaction contracts, as declared by its Supreme Court in *Isbell v. Anderson Carriage Co., 136 N. W. 457*, is that where mechanical utility or operative fitness in relation to which some standard is available is involved, not only may the honesty of the declared dissatisfaction be questioned but, even in special instances, the adequacy and reasonableness of the grounds for such action are open to investigation, citing *Wood Machine Co. v. Smith, 50 Mich. 566, 15 N. W. 906, 45 Am. Rep. 57*. This rule was recognized by the Court of Appeals for the Sixth Circuit in *Ward v. Flex-O-Tube Co. (from Michigan), 194 F. 2d 500*. Michigan is in accord with the general law. See *A. L. I. Restatement, Contracts, Section 265*.

The determination by the court below that respondent was entitled to summary judgment denying petitioners' right of trial by jury, is in conflict with the decision of this court in *Sartor v. Arkansas Natural Gas Corporation, 321 U. S. 620, 64 S. Ct. 724, 88 L. Ed. 967, rehearing denied, 322 U. S. 767, 88 L. Ed. 967, 64 S. Ct. 941*, which held that summary judgment is authorized only where the moving party is entitled to judgment as a matter of law, it is quite clear where the truth is, and no genuine issue remains for trial, and that the purpose of the rule for summary judgment is not to cut

off litigants from their right of trial by jury if they really have issues to try. The lower court determined as a matter of law that the question of satisfaction and adequacy of the place of business was one for the sole judgment of respondent; that respondent was dissatisfied; that such dissatisfaction was not fraudulent; that a reasonable time had expired for petitioners to move the dealership or begin construction of a new building and that no reasonable efforts to do so had been made. There was no evidence in the record that respondent was in good faith dissatisfied with the premises in which the dealership was located. There was evidence from which a reasonable inference could be drawn that respondent's dissatisfaction was in bad faith. There was no evidence in the record that the premises were not in fact satisfactory as to appearance and location and adequate in size and layout. There was evidence in the record that such premises were in fact satisfactory and adequate. Respondent admitted that it had approved the premises as satisfactory and adequate for the operation of its Buick dealership. Respondent signed the franchise agreement when, as it knew, the dealership was located in the premises, and provided no condition therein that the dealership would be moved, and carefully provided therein that there were no other understandings, oral or in writing, between the parties affecting the agreement.

Assuming, arguendo, an obligation on the part of petitioners to move the dealership, such obligation must be that expressed in the letter of respondent to petitioners, in which it recorded its understanding of the oral representations made to it at the time of its execution and delivery of the

franchise, i. e., that petitioners would begin construction of a new building as soon as the right-of-way was determined or meanwhile provide other suitable facilities. Petitioners had at least the longest time provided by either option and the time at which a location on the new highway with accessibility could be determined was shown by the record not to have expired at the time of respondent's termination of the franchise. Assuming, arguendo, an obligation on the part of petitioners to move within a reasonable time and to make reasonable efforts to locate other facilities for such move, the record affirmatively establishes that petitioners planned to expend $175,000.00 to $259,000.00 on the construction of a new building for the housing of a dealership and engaged in continuous efforts to locate and obtain satisfactory sites on which to build from the time of the execution and delivery of the franchise on May 29, 1956 to the date of the deadline set by respondent for making the move or for beginning new construction and that petitioners made repeated efforts to acquire other buildings, and on April 25, 1957, five days before the expiration of the deadline set by respondent, offered to acquire the Chrysler-Plymouth Building which respondent had indicated would be acceptable if repaired and remodeled, provided respondent would extend the time in order to do so. On these affirmative facts, reasonable minds could certainly draw reasonable inferences that a reasonable time had not expired and reasonable efforts had been made. In such circumstances, the ultimate questions of reasonable time and reasonable efforts were for the jury.

CONCLUSION

This case, initiated at the threshold of the administration of Public Law 1026—84th Congress, poses questions of far-reaching importance. That Act, passed to supplement the anti-trust laws of the United States in order to balance the power now heavily weighted in favor of the automobile manufacturer by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover damages sustained by reason of the failure of the automobile manufacturer to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers had as its purpose the proscription of the type of interpretation of automobile franchise agreements indulged below. The court below, in adopting the interpretation in favor of the manufacturer, which had been found by the Congress to have historically thwarted the dealer, read into the contract a provision which did not appear therein, that the satisfaction prescribed was one in the sole judgment of respondent, ignored the fact that the satisfaction and adequacy prescribed was with respect to conditions of operative fitness for which objective standards are available, ignored the Michigan law applicable to the contract, ignored the general law and, more importantly, *ignored the good faith concept introduced by the statute as a matter of public policy into the franchise relationship.* And to affirm the summary judgment the court below, in conflict with applicable decision of this court, and with the accepted and

usual standard of judicial proceedings, ignored the existence of substantial disputed issues of material fact and denied petitioners their right of trial by jury. This court should determine whether the purpose of Public Law 1026—84th Congress, shall be frustrated by the erroneous interpretation of the automobile franchise agreement which it sought to proscribe. For these reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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PROOF OF SERVICE

I, Irving L. Goldberg, Attorney for petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of April, 1962, I served copies of the foregoing Petition for Writ of Certiorari on the respondent by mailing copies in a duly addressed envelope, with first-class postage prepaid to Mr. Ira Butler, W. T. Waggoner Building, Fort Worth, Texas, and Mr. Gillis Johnson, Cantey, Hanger, Johnson, Scarborough and Gooch, Sinclair Building, Fort Worth, Texas, attorneys for respondent.

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Attorney for Petitioners.

APPENDIX

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 18758

B. T. WOODARD AND B. J. WOODARD
d/b/a WOODARD MOTOR COMPANY,
Appellants,

versus

GENERAL MOTORS CORPORATION,
Appellee.

Appeal from the United States District Court for the Northern District of Texas.

(January 11, 1962)

Before TUTTLE, Chief Judge, and CAMERON and JONES, Circuit Judges.

JONES, Circuit Judge: Here again we have appellants who, before the district court, vigorously insisted that there was no genuine issue of material fact and sought a summary judgment, and who now, before this Court, are attempting

to upset a summary judgment against them by contending with no less vigor that there are a half dozen major issues of disputed fact, each of which they say must be resolved in order to reach a decision of the cause, with an equal number of disputed questions on minor fact issues.

The appellee, General Motors Corporation, is a manufacturer of automobiles, trucks and other products. Its manufacturing and marketing are carried on through divisions. Thus its Buick automobiles are made and marketed through its Buick Division, and Chevrolet automobiles and trucks are made and marketed through its Chevrolet Division.

The appellant B. T. Woodard is the father of appellant B. J. Woodard. We will refer to them as "Father" and "Son." In 1931 the Father became a dealer in Chevrolet motor vehicles at Grandview, Texas. Five years later he moved to Greenville, Texas, where he continued as a Chevrolet dealer. In 1937 the Father became a dealer in Buick automobiles while continuing as a dealer in Chevrolets. The term used in automobile parlance for the combined operation such as was here present seems to be "dualed dealership." In 1947 the Son acquired an interest in the automobile ventures by a gift from the Father and thereafter the businesses were operated as a partnership. The Woodards' automobile enterprises were carried on in rented premises at 3207 Lee Street, in the City of Greenville.

In June of 1955 Father and Son were informed by representatives of appellee's Buick Division that the Buick contract of the appellants would not be renewed as it was de-

sired by the appellee that the Buick and Chevrolet dealerships be separated. The appellants had been informed some considerable time earlier of Buick's desire to separate the dealerships. After several conferences between one or both of the appellants and representatives of the appellee's Buick Division, it was agreed that a Buick dealership would be given to the Son upon condition that the Buick business be separated from the Chevrolet business. A location at 1403 Stonewall Street, in Greenville, was acquired in September of 1955, and the Buick business was moved to that location. The lease on the Lee Street property was to expire in April, 1956, and the appellants were unwilling to renew on the landlord's terms. Appellee's Chevrolet Zone Manager, after inspecting several alternative locations, recommended that the Chevrolet dealership be kept at the Lee Street location. The Son discussed the possibility of renting a quonset-type building for the housing of the Buick deal but nothing came of it. The Father, some time early in March, 1956, discussed with appellee's Chevrolet District Manager, a proposal to move the Chevrolet business into the Stonewall location with the Buick dealership. The District Manager was several steps below the Zone Manager in the General Motors hierarchy. After an unsuccessful attempt to advise the Zone Manager by telephone of the contemplated move, the District Manager made his report by mail. A few days later the District Manager told the Father that he "guessed" the proposed move would be all right because he had heard nothing from the Zone Manager. The move was started in March and finished on April 6, 1956. The Zone Manager,

upon learning of the move, expressed his dissatisfaction, and in so doing he objected to the Stonewall Street site as well as to the redualing of the two dealerships. He registered a complaint that the move had been undertaken without his approval. The appellants promised to obtain another location for their Chevrolet dealership, and renewed their prior assurances that the combined operation was purely temporary.

Because, it seems, of the unwillingness of the appellee to permit the appellants to leave the Chevrolet operation in the Stonewall location and to continue the combined or dualed operation, the appellee, in the spring of 1956, withheld the making of a renewal contract with the appellants for the Chevrolet dealership. However, at a meeting on May 29, 1956, between appellee's Chevrolet Zone Manager and the Father a renewal contract was executed. The appellant was described in the preamble of the agreement as Chevrolet Motor Division — General Motors Corporation, and was therein referred to as Chevrolet. At this meeting the Father once again repeated the promise that the Chevrolet operation would be removed at an early date from the Stonewall Street address. Although executed some weeks later, the agreement bore a printed date of March 1, 1956. Included among the terms and conditions as Paragraph 11 of this agreement are the following provisions:

> "In order to provide product representation commensurate with the good will attached to the name 'Chevrolet' and to facilitate the proper sale and servicing of Chevrolet motor vehicles, chassis, parts and accessories, Dealer will maintain a place of business satis-

factory as to appearance and location, and adequate in size and layout for new car sales operations, service operations, parts and accessories sales and used car sales, and will maintain the business hours customary in the trade.

"Once Dealer is established in facilities and at a location mutually satisfactory to Dealer and Chevrolet, Dealer will not move to or establish a new or different location, branch sales office, branch service station, or place of business, including any used car lot or location without the prior written approval of Chevrolet."

Among the provisions of Paragraph 23 of the agreement relating to termination, is the following:

"If Dealer does not conduct its business in accordance with any requirement set forth in Section 11 through 17, inclusive, or Section 19 of this Agreement, Chevrolet may terminate this Agreement by giving to dealer written notice of termination to be effective three (3) months after receipt of such notice."

In July, and again in August, 1956, the appellee's Buick representatives were urging and insisting that something be done to separate the Buick and Chevrolet businesses, and the Son continued to make promises that the demands would be complied with. The appellants, at this time and for some months, perhaps a year or more, had been discussing the possbility of acquiring and building upon an undetermined site on a new highway which was being built into Greenville. Nothing had been done to further this project for the assigned reason that the State Highway Department was not able to give information as to the location of access roads. Conferences and correspondence continued, with the appellee, through both its Buick and Chevrolet representatives, insisting that the appellants do something about sepa-

rating the dealerships and providing suitable space in a satisfactory location for the Chevrolet dealership, and the appellants doing little except continuing to make promises. Finally, in October of 1956, the appellee advised that unless something was done by January 1, 1957, to provide the Chevrolet deal with suitable quarters, some action would follow. More conferences were held; more letters were written; more time was sought by appellants in which to procure other facilities. The two dealerships remained together at the Stonewall Street location.

In April the appellants were looking for a purchaser for the Chevrolet portion of their business and at the same time were renewing their requests that the appellee allow them more time within which to procure other facilities. In the latter part of April the appellants advised appellee that it was then unwise to acquire a site on the new highway. In May the Son asked the appellee to send him a buyer for the Buick operation. In June the Buick dealership was sold. On the day of this sale the Father wrote to the Assistant General Sales Manager of the appellee's Chevrolet Division complaining of the treatment he had received and of the imminent cancellation of the Chevrolet sales agreement. An acknowledgment of this letter was followed, on July 23, 1957, with advice from the appellee to the appellants that the Chevrolet agreement was being cancelled. There was further correspondence between the parties in which they

reviewed the background of the controversy and stated their respective contentions.

The suit was started in the district court in the fall of 1957, with jurisdiction being initially based on diversity of citizenship. Compensatory damages in the amount of $250,000, and exemplary damages of $150,000, were sought. On January 24, 1958, the appellee's Regional Manager of its Chevrolet Division wrote the appellants offering them a new Chevrolet sales contract upon condition that adequate facilities be obtained. The appellants rejected the proposal in a long argumentative self-serving letter to which the appellee responded in kind. Such is an outline of the general sequence of the events leading up to this litigation. Other facts will be recited as the particular issues presented are considered.

After defensive pleadings were filed by the appellee, an amended complaint in two counts was filed by the appellants. The first count, like the original complaint, charged a breach of contract without reference to statute, and in paragraph numbered 13 of the pleading it was asserted that the appellants were damaged by the appellee's termination of the contract by reason of a loss of profits which they would have realized under the franchise agreement, in the amount of $250,000. The second count asserted a claim under the Automobile Dealers Franchise Act, sometimes referred to as the Automobile Dealers Day in Court Act.

Public Law 1026-84th Congress,[1] on the ground that the appellee failed to act in good faith in terminating and cancelling the franchise agreement. The first paragraph of the second count is numbered 14. In the last paragraph of the amended complaint, numbered 17, it is said that the appellants, by reason of the tortious breach of the agreement by the appellee, became entitled to recover exemplary damages in the amount of $500,000. Thus it might seem, reading the paragraphs of the amended complaint in sequence, that paragraph 17 was a part of the second count with the result that a claim was asserted for compensatory but not punitive damages on the common law cause of action for breach of contract, and for punitive but not compensatory damages under a statutory cause of action under the Automobile Dealers Act. The confused condition of the appellants' pleading was not clarified by an amendment to the amended

[1] "As used in this Act—

. . . . . .

"Section 1 (e). The term 'good faith shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof, to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, That recommendation, endorsement, or exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.

. . . . . .

"Section 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the costs of suit by reason of the failure of said automobile manufacturer from and after the passage of this act to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, cancelling or not renewing the franchise with said dealer: Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith." 70 Stat. 1125, 15 U. S. C. A. §§ 1221, 1222.

complaint in which, as paragraph 18, it was averred that by reason of the violation of the Act "as set forth in paragraps 14 through 16" the appellants were damaged, in addition to loss of profits for the unexpired term of the contract, in the loss of anticipated profits in "the period," ad infinitum perhaps, "from and after" the expiration date as fixed in the contract.

Two specifications of error are made: first, that the district court erred in denying the appellants' motion for summary judgment on the ground that the undisputed facts established the appellee's liability as a matter of law, and second, that if the facts did not show the appellee to be liable, then there were genuine issues as to material facts. The appellants state, perhaps more specifically, their claims against the appellee in the following language:

> "1. Claim for compensatory damages in loss of anticipated profits for wrongful breach of the Chevrolet franchise agreement before its term had ended;
>
> "2. Claim under Section 1222, Title 15, United States Code, for compensatory damages for loss of anticipated profits beyond the end of the term of the franchise agreement for the failure to act in good faith in terminating the franchise agreement, in that appellee subjected appellants to coercion and intimidation and threats thereof by threatening to terminate and terminating the Chevrolet franchise agreement because appellants refused to be coerced and intimidated into building a new building or moving the Chevrolet dealership to a different location before appellants could obtain a location satisfactory to appellants, which appellants, under the terms of the franchise agreement, were not obligated to do;

"3. Claim for exemplary damages (alternative to 2 above) on account of the tort accompanying the breach of the franchise agreement."

Our question, broadly stated, is whether the undisputed material facts are such as to permit or require a determination that the appellee is without liability to the appellants for breach of contract under the common law or for breach of contract or statutory duty under the Automobile Dealers Act. Stated in more narrow confines the problem is whether, as the appellee insists and as the district court found, the appellee was justified, on the undisputed facts, in terminating the contract under paragraph 23 thereof for a breach by the appellants of the provisions of paragraph 11, or whether, as the appellants urge, there is evidence that they fully complied with paragraph 11, or that the appellee waived and is estopped to rely upon paragraph 11, and that the termination was a wrongful breach of the contract or a violation of the Act.

It is the position of the appellants that when, on May 29, 1956, the contract dated March 1, 1956, was signed, the Chevrolet dealership was in the Stonewall Street premises, that location must be regarded as a suitable and satisfactory location, and that the appellee is not only estopped to assert the contrary but any such assertion and action thereon constituted coercion, intimidation, threats and bad faith giving rise to punitive as well as compensatory damages.

We are convinced of the correctness of the trial court's decision that there can be no recovery on the common law count for breach of contract. The situation is not one where

the right to cancel provided in the agreement may be exercised at the option of either party. Such provisions are upheld under the law of Texas. See *Maddox Motor Co. v. Ford Motor Co.*, Tex. Comm. App., 23 S. W. 2d 333; *Morriss v. Hudson Motor Car Co.*, 5th Cir. 1928, 24 F. 2d 806. The provision here, upon which reliance is placed, makes cancellation by the manufacturer conditioned upon the failure of the dealer to maintain "a place of business satsifactory as to appearance and location and adequate in size and layout" for the operation of the dealership. It is the manufacturer whose good will is attached to the name of its product, and the manufacturer, as well as the dealer, is concerned with the maintenance of the competitive position of the automobiles sold to and by the dealer throughout the trade area of the dealer. It is then the appellee who is to be satisfied under the terms of the agreement between the parties to this appeal. Under the common law, in cases where a right to terminate is given to a contracting party upon becoming dissatisfied, it is the rule that the reasonableness of his dissatisfaction is not to be questioned by the other contracting party or by any tribunal, subject only to the corollary doctrine, as announced by the Court of Civil Appeals of Texas, that the dissatisfaction "must not be fraudulently, and in bad faith, pretended, so as to simulate a dissatisfaction that does not in fact exist." *Sanger v. Slayden*, 7 Tex. Civ. App. 605, 26 S. W. 847. The term "bad faith" as used by the Texas court is the equivalent of fraud, as appears from the foregoing quotation. See *Walraven v. Farmers & Merchants National Bank*, 96 Tex. 331, 74 S. W. 530. The principle announced in *Sanger v. Slayden*, *supra*, was

applied by this Court in *Ard Dr. Pepper Bottling Co. v. Dr. Pepper Co.*, 5th Cir. 1953, 202 F. 2d 372. From the undisputed evidence, hereinafter reviewed, it is clearly apparent that there was no breach of the agreement by the appellee and no right of recovery of damages by the appellants under their common law theory as asserted in the first count of their amended complaint.

The Automobile Dealers Franchise Act has received considerable notice from the law reviews. Kessler, Automobile Dealers Franchises, 66 Yale L. J. 1135; Brown and Conwill, Automobile Manufacturer-Dealer Legislation, 57 Colum. L. Rev. 219; Strand and French, The Automobile Dealer Franchise Act, 25 Geo. Wash. L. Rev. 667; Note, 70 How. L. Rev. 1239; Note, 26 U. Cinc. L. Rev. 110; Note, 9 Stan. L. Rev. 760; Comment, 3 Wayne L. Rev. 206. It has received less attention from the courts in reported judicial opinions. *Leach v. Ford Motor Co.*, D.C.N.D. Calif. 1960, 189 F. Supp. 349; *Schnabel v. Volkswagen of America, Inc.*, D.C.N.D. Ia. 1960, 185 F. Supp. 122; *Reliable Volkswagen Sales and Service Co., Inc. v. World-Wide Automobile Corporation*, D.C.-N.J. 1960, 182 F. Supp. 412; *Barney Motor Sales v. Cal Sales, Inc.*, D.C.S.D. Calif. 1959, 178 F. 2d 172; *Pinney & Topliff v. Chrysler Corporation*, D.C.S.D. Calif. 1959, 176 F. 2d 801; *Staten Island Motors, Inc. v. American Motors Sales Corporation*, D.C.N.J. 1959, 169 F. 2d 378. Most of the law review discussions of the Act suggest serious questions as to the constitutionality of the Act and the appellee here challenges the validity of the statute on constitutional grounds. The constitutional attacks are on the theories that

the Act is class legislation, that it unduly restricts the right of contracting, that it rewrites existing contracts, that here is a vagueness, uncerainty and ambiguity in the statutory terms which render the Act nugatory, and that the vague and uncertain provisions create an unlawful delegation to the counts of a regulatory power. No judicial opinion has been brought to our attention in which the constitutionality of the Act has been discussed.

A Virginia statute has been upheld against charges that it violated the equal protection and due process clauses. *E. L. Bowen and Company v. American Motors Sales Corporation*, D.C.E.D. Va. 1957, 153 F. Supp. 42. An Act of the Minnesota Legislature has been sustained as a valid exercise of the police power. *Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc.*, D.C. Minn. 1956, 142 F. Supp. 469. A concurring opinion in a case before the Supreme Court of Wisconsin stated that a statute of that state was invalid. *Kuhl Motor Co. v. Ford Motor Co.*, 270 Wis. 488, 71 N. W. 2d 420, 55 A.L.R. 2d 467. A federal district court, sitting in Wisconsin, invoked the doctrine of abstention to permit the state courts to construe the state statute before passing upon constitutional issues. *A. F. L. Motors, Inc. v. Chrysler Motor Corporation*, D.C.E.D. Wis. 1960, 183 F. Supp. 56. This Court, in *Best Motor and Implement Co. v. International Harvester Co.*, 5th Cir. 1958, 252 F. 2d 278, recognized the presence of constitutional doubts with respect to a Louisiana statute but found it unnecessary to resolve them. A Colorado statute, quite similar in its terms to the Automobile Dealers Franchise Act, was held invalid as in conflict

with the Federal Constitution by a three-judge court in *General Motors Corporation v. Blevens*, D.C. Colo. 144 F. Supp. 381. It is a well settled rule that the constitutionality of a statute will not be judicially determined unless such determination cannot be avoided. *Clay v. Sun Insurance Office*, 363 U. S. 207, 80 S. Ct. 1222, 4 L. Ed. 2d 1170; *United States v. Witkovich*, 353 U. S. 194, 77 S. Ct. 779, 1 L. Ed. 2d 765; *United States v. International Union*, 352 U. S. 567, 77 S. Ct. 529, 1 L. Ed. 2d 563, reh. den. 353 U. S. 943, 77 S. Ct. 808, 1 L. Ed. 2d 763; *Byers v. Byers*, 5th Cir. 1958, 254 F. 2d 205; 16 C. J. S. 307, Constitutional Law § 94. This settled doctrine permits and probably requires that we avoid any making of a decision with respect to the constitutionality of the Act.

The policy behind the enactment of the Automobile Dealers Franchise Act was to establish a balance of power as between manufacturers and dealers in the automobile industry by curtailing the economic advantages of the larger manufacturers and increasing those of the dealers. To effectuate this policy the Congress created a new cause of action permitting a dealer to recover damages from manufacturers upon the failure of the manufacturer to act in good faith in terminating or not renewing the dealer's franchise. By the statutory definition, "good faith" is restricted to a duty to act in a fair and equitable manner so as to guarantee freedom from coercion, intimidation or threats. The plain meaning construction of the definition would give to a dealer a cause of action only if the acts of the dealer are not fair and equitable and are coercive. The legislative history

supports this construction. In the report of the Committee on the Judiciary of the House of Representatives it is said:

> "The principal effect of the bill as amended by the committee is to give the dealer a right of action against the manufacturer, where the manufacturer fails to act in a fair and equitable manner so as to guarantee the dealer freedom from coercion, intimidation or threats of coercion or intimidation. The term 'fair and equitable' as used in the bill is qualified by the term 'so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party.' In each case arising under this bill, good faith must be determined in the context of coercion or intimidation or threats of coercion or intimidation." H. R. Rep. No. 2580, 84th Cong. 2d Sess. 9.

Judicial construction has applied the context of coercion doctrine in determining good faith. *Leach v. Ford Motor Co.*, supra; *Staten Island Motors, Inc. v. American Motors Sales Corporation*, supra. In one case, however, the statutory definition of good faith was apparently overlooked and it was said that the trial courts were allowed a "wide discretion in giving specific formulation to the immensely vague term 'good faith'!" It is not strange or shocking that Congress should have restricted the cause of action to cases involving coercion, since one of the principal evils which the Act was designed to remove was the exertion of pressures by the dominant automobile manufacturers upon dealers to accept automobiles, parts, accessories and supplies which they neither needed nor wanted and which they felt their market would not absorb. S. Rep. No. 2073, 84th Cong. 2d Sess. 2.

An automobile manufacturer is not precluded by the Act from including in its contracts with dealers, as the appellee

has done here, requirements that dealers shall provide adequate representation commensurate with the good will attached to its trade name and facilitate the proper sale and servicing of its motor vehicles. The manufacturer is entitled to bargain for the protection of its good name, to provide for the trade acceptance of its wares, and to have a reasonable expectation that those who are marketing its cars have the facilities for coping with the sales efforts of those who are dealing in the products of competitors. Cf. *Reat Motor and Implement Co. v. International Harvester Co.* supra. As is said in the House Report, the Act "does not prohibit the manufacturer from terminating or refusing to renew the franchise of a dealer who is not providing the manufacturer with adequate representation. Nor does the bill curtail the manufacturer's right to cancel or not to renew an inefficient or undesirable dealer's franchise." H R Rep No 2850, 84th Cong, 2d Sess, 9. We do not think that the good faith requirement, whether viewed in or outside of the context of coercion, prevents a manufacturer from terminating a contract with a dealer where the dealer has, over a long period of time, violated a valid and material clause of the contract and has failed to comply with the continuing insistence of the manufacturer upon performance. And it is shown, we think, by the quoted portions of the House Report, that there was no legislative intent that the prohibited coercion should include a threat of cancellation if there should be a prolonged failure on the part of the dealer to heed the recommendations or wish of a representative of the manufacturer that the dealer make a bona fide effort to comply with his undertakings.

It is established by stipulation or by the appellants' admissions that the Lee Street location was a satisfactory facility for the Chevrolet dealership, that the dealership was moved from the Lee Street site to Stonewall Street without the permission of the appellee required by the contract, that the appellee stated at the time of the move and on many subsequent occasions that it considered the Stonewall Street premises to be unsatisfactory and inadequate for the Chevrolet dealership, that such location was in fact inadequate for the Chevrolet dealership, that at the time the Chevrolet deal was moved to Stonewall Street the appellants represented to the appellee that the Stonewall site was a purely temporary location, that no plans were ever made or site selected for a building, and no assurances were ever made by appellants as to when the appellee might expect this to be done. It appears that the appellee, at first patiently and hopefully and later with exasperation and despair, cajoled, then exhorted and finally demanded that adequate facilities be provided. From the time of the move of the Chevrolet dealership into the Stonewall Street property until the agreement was cancelled nearly a year and a half later, the appellants investigated and inquired as to locations and sites but at the end of the period they were no nearer to the providing of an adequate facility for the operation of their Chevrolet dealership than when the prohibited move was made to the Stonewall Street location. The duty of good faith, however measured, did not require the appellee to continue the contract arrangement for a longer period.

On March 1, 1956, the date borne by the franchise agreement, the Chevrolet dealership was located at the Lee Street

address. On May 29, 1956, the date on which the agreement was executed and delivered, the dealership had been moved to the Stonewall Street location. The appellants assert that because the dealership was at the Stonewall Street site on May 29, 1956, the appellee was estopped to deny that such premises were satisfactory or adequate. The doctrine of estoppel by contract, upon which the appellants rely, "means no more than that a party is bound by the terms of his own contract until set aside. . . ." It is "based on the idea that a party to a contract will not be permitted to take position inconsistent with its provisions to the prejudice of another." *United Fidelity Life Insurance Co. v. Fowler*, Tex. Civ. App. 38 S. W. 2d 128, 131. There can be no estoppel by contract in the absence of a showing by the party invoking it that he was misled to his injury by a reliance upon recitals in the instrument and that he had no notice of facts contrary to those recited. *City of Lubbock v. Walsh*, Tex. Civ. App. 316 S. W. 2d 923; *Kuykendall v. Spiller*, 299 S. W. 522. To state these principles is to show the inapplicability of the doctrine of estoppel by contract in this situation. It was known by the appellants prior to the execution and delivery of the agreement that the appellee regarded the Stonewall Street premises as unsuitable and inadequate. Before, at the time of, and subsequent to the execution and delivery of the contract the appellants promised to procure a satisfactory and adequate location for the Chevrolet dealership. The efforts of the appellee in seeking compliance with these undertakings were consistent with and in the enforcement of the contractual obligations of the appellants.

There are no other issues which require discussion. We find no error in the record requiring a reversal of the judgment. It is

AFFIRMED.

A true copy
Test: EDWARD W. WADSWORTH

Edward W. Wadsworth
Clerk U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

Mar 9, 1962

JUDGMENT

Extract from the Minutes of January 11, 1962

No. 18758

B. T. WOODARD AND B. J. WOODARD
d/b/a WOODARD MOTOR COMPANY,

v.

GENERAL MOTORS CORPORATION

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, B. T. Woodard and B. J. Woodard, d/b/a Woodard Motor Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

* * * * * *

Public Law 1026—84th Congress

(Act of August 8, 1956, Chap. 1038, Secs. 1-5, 70 Stat. 1125; 15 U. S. Code, Secs. 1221-1225.)

AN ACT to supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

* * * * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

That as used in this Act—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manufacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other

form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operating under the terms of a franchise and engaged in the sole or distribution of passenger cars, trucks, or station wagons.

(d) The term "commence" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith. [August 8, 1956, Chap. 1038, Sec. 1, 70 Stat. 1125; 15 U. S. Code, Sec. 1221.]

Sec. 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after the passage of this Act to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided*, That in any such suit the manufacturer shall not be barred from asserting in defense

of any such action the failure of the dealer to act in good faith. [August 8, 1956, Chap. 1038, Sec. 2, 70 Stat. 1125; 15 U. S. Code, Sec. 1222.]

* * * * *

Sec. 3. Any action brought pursuant to this Act shall be forever barred unless commenced within three years after the cause of action shall have accrued. [August 8, 1956, Chap. 1038, Sec. 3, 70 Stat. 1125; 15 U. S. Code, Sec. 1223.]

* * * * *

Sec. 4. No provision of this Act shall repeal, modify, or supersede, directly or indirectly, any provision of the anti-trust laws of the United States. [August 8, 1956, Chap. 1038, Sec. 4, 70 Stat. 1125; 15 U. S. Code, Sec. 1224.]

* * * * *

Sec. 5. This Act shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this Act and an express provision of State law which can not be reconciled. [August 8, 1956, Chap. 1038, Sec. 5, 70 Stat. 1126; 15 U. S. Code, Sec. 1225.]

84th Congress, 2d Session } HOUSE OF REPRESENTATIVES } Report No. 2850

AUTOMOBILE DEALER FRANCHISES

July 20, 1956.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. ROGERS of Colorado, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3879]

* * * * *

PURPOSE OF THE BILL AS AMENDED

The purpose of the bill as amended by the committee is to supplement the antitrust laws of the United States so as to permit a franchised automobile dealer to bring suit for damages, without regard to the amount in controversy, in United States district courts for the failure of the automobile manufacturer to act in good faith in performance or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the dealer's franchise. The bill creates a cause of action where none previously existed in that, irrespective of contractual provisions, it grants a right of review in the Federal courts of disputes between automobile manufacturers and their dealers involving the good faith of the manufacturer in complying with, in terminating, or in not renewing the franchises.

In addition to the provisions of the written agreements or contracts between automobile manufacturers and dealers, the bill in its definition of good faith imposes the duty on each party to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party. Unless the transactions between the parties involve coercion or intimidation, or threats of coercion or intimidation, the duty of good faith imposed by the bill does not prohibit recommendation, endorsement, exposition, persuasion, urging or argument normal in competitive commercial relationships.

REASONS FOR BILL

Concentration of economic power in the automobile manufacturing industry of the United States has developed to the point where legislation is required to remedy the manifest disparity in the ability of franchised dealers of automotive vehicles to bargain with their manufacturers. Investigations of the automobile industry, moreover, demonstrate a continuing trend toward gretaer concentration, as well as abuse by the manufacturers of their dominant position with respect to their dealers. These investigations have disclosed practices and conditions which require new legislative methods and a change in established concepts. The bill as amended proceeds from the conclusion that in the automobile industry concentration of economic power has increased to the degree that traditional contractual concepts are no longer adequate to protect the automobile dealers under their franchises.

Since World War II, production in the automobile industry has been increasingly concentrated among the three major producers: General Motors Corp., Ford Motor Co., and the Chrysler Corp. In 1946, General Motors produced 46 percent of all passenger cars; by 1954 its share of the market had increased to 52 percent, with Ford producing 31 percent and Chrysler 13 percent. In 1954 the remaining 3 independent automobile producers accounted for only 4 percent of all passenger cars produced. Furthermore, the Department of Justice advised the committee that—

> figures thus far for 1956 suggests that General Motors now produces more than 55 percent of all passenger cars in this country.

What is more, competition to the three major automobile producers from independents has failed to materialize in the postwar period; in fact, it has become more remote.

General Motors Corp., with assets of $6,344,772,000, sales amounting to $12,443,277,000, and net profits of $1,189,477,000, in 1955, was the largest corporation in the United States. The second largest automobile producer in the United States, Ford Motor Co., in 1955 ranked third among American industrial corporations. In 1955, Ford Motor Co. had assets of $2,585,337,000, sales amounting to $5,594,022,000, and net profits of $436,991,000. Chrysler Corp. the third ranking member of the automobile industry in 1955, ranked fifth among United States industrial organizations and had assets of $1,362,883,000, sales in the amount of $3,466,222,000, and net profits of $100,063,000.

Although automobile dealers are substantial businessmen in their local communities, in comparison with the automobile

manufacturer, an individual dealer is a small-business man whose size makes it impossible for him to bargain effectively. In contrast with the economic power of each of the automobile manufacturers, the average dealer has an investment in the amount of $118,000. There are approximately 40,000 franchised automobile dealers in the United States. Roughly one-half, or 20,000, of these dealers have contracts with General Motors, while 9,000 are franchised by Ford Motor Co.

While the individual automobile dealer may be classified as a small-business man, collectively the automobile-dealer group is of great importance to the economy. Franchised automobile dealers have a total investment in their businesses in the amount of more than $5 billion and employ approximately 668,000 persons.

Extensive testimony was adduced by the committee at the hearings on this bill with respect to both the contractual relationship between automobile manufacturers and their dealers, and marketing practices current in the automobile industry. Distributive conditions condemned by the Federal Trade Commission in its report on the motor-vehicle industry, issued in 1939, have continued up to the present time, according to investigations made by the Subcommittee on Automobile Marketing Practices of the Senate Committee on Interstate and Foreign Commerce and by the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary.

In 1939, the Federal Trade Commission after an extensive investigation of the automobile marketing practices stated:

> The Commission finds that motor-vehicle manufacturers, and, by reason of their great power, especially

> General Motors Corp., Chrysler Corp., and Ford Motor Co., have been, and still are, imposing on their respective dealers unfair and inequitable conditions of trade, by requiring such dealers to accept, and operate under, agreements that inadequately define the rights and obligations of the parties and are, moreover, objectionable in respect to defect of mutuality; that some dealers, in fact, report they have been subjected to rigid inspections of premises and accounts, and to arbitrary requirements by their respective motor-vehicle manufacturers to accept for resale quantities of motor vehicles or other goods, deemed excessive by the dealer, or to make investments in operating plants or equipment without adequate guaranty as to term of agreement or even supply of merchandise; and that adequate provisions are not included for an equitable method of liquidation of such investments, sometimes made at the insistence of the respective motor-vehicle manufacturer.[1]

In connection with its study of the General Motors Corp., the staff of the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary reported on automobile distribution systems as follows:

> The franchise system for distribution of automobiles has been described as a system devised by the automobile manufacturers to secure maximum rights with a minimum of liability * * *. It may be defined as an agreement by which the manufacturer appoints the dealer to handle his line, and the dealer in return for this privilege, agrees to conduct his business according to the standards and desires of the manufacturer. It is the method by which the manufacturer assures himself of control over the distribution of his product in what amounts to quasi-integration to the retail level of distribution. The manufacturer can maintain this control because of his superior economic position which he retains by threat of franchise termination.

[1] H. Doc. 468, 76th Cong., 1st sess., Report on Motor Vehicle Industry, p. 1075.

In various suits in the past, General Motors has characterized its dealer franchise as follows:

1. That it does not constitute a legal contract;

2. That it lacks mutuality, and represents no legally enforceable obligation on the part of the seller to sell or on the part of the dealer to buy;

3. That it provides that the dealer shall perform to the satisfaction of the seller, and that the question of satisfaction is for the seller alone to determine;

4. That no damages are recoverable by the dealer since loss of profits was not contemplated by the parties;

5. That it is unenforceable and void because of indefiniteness, uncertainty, and lack of consideration;

6. That, if valid, the agreement gives the factory the right to terminate at will.

With few exceptions, the courts have sustained the manufacturer's interpretation of the agreement, and the courts have held that dealers fail to state a cause of action when suit is brought on the agreement alone.[2]

The hearings of the investigations conducted during this Congress in the Senate contain numerous instances of automobile manufacturers coercing and intimidating their franchised dealers. A primary source of the manufacturers power over their dealers stems from the unilateral nature of the franchise agreements.

Automobile dealers who have been subjected to economic duress and intimidation by manufacturers have been unable

[2] S. Rept. No. 1879, 84th Cong., 2nd sess., Bigness and Concentration of Economic Power—A Case Study of General Motors Corp., p. 79.

to obtain redress in the courts. Confronted with express provisions in the dealer's franchise, courts have been reluctant to impose a condition of good faith on the part of the manufacturer. In *Bushwick-Decatur Motors, Inc.*, v. *Ford Motor Co.* (116 F. 2d 675, C. A. 2, (1940)), the court stated:

> With a power of termination at will here so unmistakably expressed, we certainly cannot assert that a limitation of good faith was anything the parties had in mind. Such a limitation can be read into the agreement only as an overriding requirement of public policy.

In *Buggs* v. *Ford Motor Co.* (113 F. 2d 618, C. A. 7, (1940)), the court stated:

> An examination of its terms, which are many, indicates that it was dictated by the manufacturer at Detroit, and drawn by its counsel with the avowed purpose of protecting the manufacturer to the utmost and granting, if any, few rights to, and the smallest possible protection of, the agent.
>
> It is one which affords some support for the wisdom and the necessity of legislation which protects the weak against a strong party in situations like the instant one.

In adjudicating disputes between manufacturers and dealers, application of contract law concepts by the courts has prevented relief to the dealer. In *Ford Motor Co.* v. *Kirkmyer Motor Co.* (65 F. 2d 1001, C. A. 4, (1933)), the court stated:

> While there is a natural impulse to be impatient with a form of contract which places the comparatively helpless dealer at the mercy of the manufacturer, we cannot make contracts for parties or protect them from the provisions of contracts which have been made for themselves. Dealers doubtless accept these one sided contracts because they think that the right to deal in the product of the manufacturer, even on his terms, is valu-

> able to them; but, after they have made such contracts, relying upon the good faith of the manufacturer for the protection which the contracts do not give, they cannot, when they get into trouble, expect the courts to place in the contracts the protection which they themselves have failed to insert.

Similarly the court in *S. B. McMaster* v. *Chevrolet Motor Co.* (3 F. 2d 469, E. D., S. C., 1925), stated as follows:

> • • • they are entirely within their rights in so framing their contract as to carry out their intention. The intentions of the parties in the absence of any grounds of public policy must prevail, and their intention must be gathered from the terms of the contract itself.

This bill assures the dealer of an opportunity to secure a judicial determination, irrespective of the contract terms, as to whether the automobile manufacturer has failed to act in good faith in performing or complying with any of the provisions of his franchise or in terminating, canceling, or not renewing his franchise.

The committee recognizes that, in response to the congressional investigations and legislative proposals during this Congress, many changes have been made, or are contemplated, in the contractual relationship of automobile manufacturers and their dealers. For example, effective March 1, 1956, General Motors Corp. made available to all its dealers a choice of three selling agreements:

> (1) A five-year agreement cancelable by General Motors only for cause and cancelable by the dealer without cause on 30 days' notice;
>
> (2) A 1-year agreement cancelable by General Motors only for cause and cancelable by the dealer without cause on 30 days' notice;

(3) An indefinite term agreement cancelable by either party without cause on 90 days' notice.

In addition the revised selling agreements of General Motors include new provisions which create important dealer benefits. These new benefits could mitigate many of the conditions which caused complaint under the old franchise. The committee has been informed that Ford Motor Co. also is considering revising its franchise agreements in order to provide its dealers benefits comparable to those recently made available by General Motors.

While it is true these developments in the automobile industry may diminish some of the abuses found to exist, this does not derogate from the necessity for legislation at this time. For one thing, the new General Motors selling agreements afford no guaranty against dealer coercion or intimidation or threats thereof by the manufacturer. Furthermore, what the automobile manufacturers do in response to congressional investigation or in contemplation of pending legislation, they can readily undo. The record before the committee demonstrates that, in the past, gains made by dealers after investigation into market practices of the automobile manufacturers have not always been retained. This bill assures a minimum amount of protection for the dealer under the terms of any automobile franchise.

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